

1 THE WITNESS: I don't know what he's going to
2 do with the money.

3 BY MR. FRIEDMAN:

4 Q Okay. That's fine. Can you tell me, to the
5 best of your knowledge, your understanding as to when
6 this agreement would operate?

7 A Do you mean when it became effective?

8 Q No, no. When the terms of it might be
9 applied. If you don't understand it, let me ask you
10 another question.

11 A Okay, ask me another question.

12 Q What is your understanding of the reason for
13 entering into this agreement?

14 A I wanted to enter into this agreement. I felt
15 it was important to keep everything separate prior to
16 the marriage. That's really my only reason.

17 Q Were you advised by counsel, an attorney, when
18 you entered into this document?

19 A Yes.

20 Q Can you tell me his name?

21 A Her name is Kristena, K-R-I-S-T-E-N-A, Beito,
22 B-E-I-T-O.

23 Q Okay. And what is your understanding from
24 your discussions with Ms. Beito as to how this agreement
25 affects you?

1 A Basically that I have no claim to those
2 properties that were listed in here of David's nor does
3 he have any claim to mine that we brought into the
4 marriage and this is what we intended to do was to
5 protect each other.

6 Q Would it be fair to say that David brought
7 substantially more than you?

8 A Absolutely yes.

9 Q Again going to that missing schedule B, were
10 there applications for Blackfoot or Baker, Oregon listed
11 on that schedule B to the best of your knowledge?

12 A We had not applied.

13 Q Okay. Going back to Exhibit 3.

14 A Tell me where Exhibit 3 is.

15 Q It says Ferguson Exhibit #3 on top.

16 MR. MONAHAN: This is the diversification
17 statement.

18 THE WITNESS: Okay.

19 BY MR. FRIEDMAN:

20 Q If you would look at the last sentence there.
21 "In the event of the death of David Capps, the stock of
22 KSRV will be placed into a trust for the benefit of Mr.
23 Capps' three minor children by a prior marriage." How
24 do you know that?

25 A We agreed to that.

1 Q In what document did you agree to that?

2 A Probably the will. I'm not sure, but I'm
3 certain it's in a will.

4 Q Okay. You've entered into a will?

5 A Yes.

6 Q And this is a will you entered into subsequent
7 to the marriage?

8 A Or at the time of.

9 Q Can you tell me what does the will say
10 regarding any of the assets of Mr. Capps?

11 A These specifically will be placed in trust for
12 the children and he took out a \$500,000 insurance policy
13 for me.

14 Q Does the will say, again to the best of your
15 knowledge, if Mr. Capps should die that his assets,
16 except for those that are listed in the antenuptial, go
17 to you?

18 JUDGE LUTON: Which will are you talking
19 about?

20 THE WITNESS: I don't know.

21 BY MR. FRIEDMAN:

22 Q To the best of your knowledge, in Mr. Capps'
23 will does it provide that his assets, except for those
24 items on schedule A to the antenuptial, shall pass to
25 you as his spouse?

1 A I think I get the \$500,000 insurance policy.

2 Q And nothing else from Mr. Capps?

3 A I don't think so, Mr. Friedman.

4 Q Okay, fine.

5 A I don't remember.

6 Q Did you enter into a will for yourself, Clare
7 Ferguson?

8 A Yes.

9 MR. FRIEDMAN: I have no further questions,
10 Your Honor, and I thank the witness.

11 JUDGE LUTON: Radio Representatives?

12 MR. ALPERT: Just a few questions, Your Honor.

13 BY MR. ALPERT:

14 Q You testified recently that I guess a sales
15 contract has been entered into and filed with the
16 Commission concerning the stations that are owned by Mr.
17 Capps in Twin Falls.

18 A That's correct.

19 Q And that's currently pending before the FCC.
20 Is that correct?

21 A That's correct.

22 Q Is that the station at which Mr. Capps
23 predominantly spends his time?

24 A Until two years ago he was manager there but
25 he has not been directly involved for the last two

1 years.

2 Q But that station is the one that's closest to
3 your home, is that correct?

4 A That's correct.

5 Q So nevertheless he was not active at that
6 station on a day-to-day basis?

7 A Not for the last two years, no.

8 Q In the event the Blackfoot application is
9 granted, you say that you will all move to Blackfoot?

10 A Yes.

11 Q That includes Mr. Capps?

12 A Yes.

13 Q Where will he be working at that point?

14 A He will continue to check on Ontario on a
15 weekly or every other week basis and he is planning to
16 start a consulting business.

17 Q Based in Blackfoot?

18 A Yes.

19 MR. ALPERT: Just one moment, Your Honor.

20 BY MR. ALPERT:

21 Q Ms. Ferguson, you testified that the person
22 who is predominantly supervising the construction of
23 your Baker, Oregon permit is Kelly Carlson. Is that
24 correct?

25 A That's correct.

1 Q Does Mr. Carlson have any relationship to Mr.
2 Capps' station?

3 A Yes, he's presently the engineer at the radio
4 station in Twin Falls.

5 Q Is he what's considered the chief engineer of
6 the station?

7 A That's correct. He's a contract engineer and
8 he happens to work at that radio station. He works for
9 a lot of stations around Idaho.

10 Q So right now he's splitting his time between
11 your project and Mr. Capps' project?

12 A And all of his others. Yes.

13 Q And all of his others. Is he being paid
14 separately from you in conjunction with your project or
15 is that part of his duties in conjunction with his
16 employment with KSRV Inc.?

17 A He's being paid separately.

18 Q Especially by you?

19 A Yes.

20 Q Is that coming from a joint account or from
21 your personal funds?

22 A Joint.

23 Q On what date were you married?

24 A June 1st, 1985.

25 Q This is more a point of curiosity than

1 anything else. This agreement though was signed on May
2 30th, 1985 which I assume was a day or two before you
3 got married?

4 A Yes.

5 Q Why is it referred to as an antenuptial
6 agreement?

7 A That's what it's called in Idaho.

8 Q It's better than a pre-nuptial agreement.

9 A I know. It's called that in Idaho. I don't
10 know why. It sounds horrible. It sounds like dooms
11 day.

12 MR. MONAHAN: Maybe the ante means against
13 marriage.

14 MR. ALPERT: No further questions.

15 JUDGE LUTON: Redirect?

16 MR. MONAHAN: Yes, Your Honor, just a couple
17 of questions.

18 REDIRECT EXAMINATION

19 BY MR. MONAHAN:

20 Q Ms. Ferguson, how many times have you visited
21 Blackfoot, Idaho?

22 A I'm not sure exactly but more than a half a
23 dozen.

24 Q Dating back until when?

25 A I think the first time I was there in 1973.

1 Q How often do you go down to Blackfoot in the
2 course of a year?

3 A I'm there a couple of times a year.

4 Q Do you have friends in Blackfoot?

5 A Yes.

6 Q How long have you been in broadcasting?

7 A Six and a half years.

8 Q You began your career in broadcasting at
9 station KEZJ AM and FM?

10 A That's correct..

11 Q You mentioned that you have responsibilities
12 for sales training at the station.

13 A I do sales training at the radio station and
14 I've also done outside sales training.

15 Q Where have you done outside sales training?

16 A KIFI in Idaho Falls. It's a t.v. station. I
17 trained their sales staff. I've been involved in a
18 couple of other seminars involving radio station sales
19 people from our organization sales.

20 Q How did it come to pass that you were training
21 television station personnel in sales?

22 A The owner, Jerry Brady, invited me to come
23 down and present our sales training program to their
24 Pocatello and Idaho Falls sales people.

25 Q How long ago did that occur?

1 A The first time was about a year and a half ago
2 and I've had two follow ups at three and six month
3 intervals.

4 Q Is this to train present personnel?

5 A Their present.

6 Q You mentioned that you have responsibilities
7 for programming at the station and you specifically
8 referred to agricultural programming.

9 A That's correct.

10 Q How much agricultural programming does the
11 station do?

12 A We have three and a half hours a day, five
13 days a week and then two hour broadcasts on Saturday and
14 Sunday.

15 Q Isn't three and a half hours of agricultural
16 program a substantial amount for a station like KEZJ?

17 MR. FRIEDMAN: Objection, leading.

18 BY MR. MONAHAN:

19 Q Why do you do three and a half hours of
20 agricultural program on a daily basis at station KEZJ?

21 A Because we're an agricultural-based community
22 and there isn't another station serving the community.

23 Q Prior to your 30 hour a week involvement at
24 the station, what number of hours did you devote to your
25 position at KEZJ?

1 A Forty to fifty hours a week.

2 Q When did you reduce your time commitment per
3 week at the station to 30 hours?

4 A Last spring.

5 Q You mentioned that your husband was active at
6 the station KEZJ AM and FM until two years ago?

7 A That's correct.

8 Q Does he still maintain an office at the
9 station?

10 A No, he has an office downtown.

11 Q Does your husband intend to remain in
12 broadcasting as an active owner?

13 A No, he's selling the station in Ontario as
14 soon as he possibly can.

15 Q And then he's going into a consulting
16 business?

17 A That's correct.

18 Q You've recently acquired a ranch with your
19 husband?

20 A Yes.

21 Q Where is that located?

22 A It's in the Hagerman Valley in Idaho west of
23 Twin Falls.

24 Q Does your husband spend much time on the
25 ranch?

1 A He's out there a day a week or so.

2 MR. MONAHAN: Excuse me, Your Honor.

3 BY MR. MONAHAN:

4 Q You testified that KSRV Inc., the company
5 which is the licensee of stations KEZJ AM FM at the
6 Ontario station, is owned by your husband and his
7 children. I believe Mr. Friedman handed you an exhibit
8 entitled An Ownership Report.

9 A Yes.

10 Q That's Bott Exhibit Number 7. Could you turn,
11 Ms. Ferguson, to page 3 of that report?

12 A Yes.

13 Q How many shares of stock does it list Mr.
14 Capps as holding?

15 A Five hundred.

16 Q Are there any shares reported for any other
17 members of the Capps family?

18 A I know the children are involved but I don't
19 know how many shares. I don't know. I think it's in my
20 application.

21 Q Do you know if the children vote their shares
22 of stock?

23 A No, they don't.

24 Q Who votes their shares?

25 A He does. David.

1 Q Do you know what interest they hold?

2 A No.

3 Q How old are Mr. Capps' children?

4 A Jeff is 21 and Andy is 18 and Emily is 17.

5 Q Do you receive statements from my firm for
6 services billed?

7 A Yes.

8 Q Do you take steps to have those paid?

9 A They're paid every month.

10 Q Thank you.

11 I have no further questions. Thank you.

12 JUDGE LUTON: Recross.

13 RECROSS EXAMINATION

14 BY MR. FRIEDMAN:

15 Q Ms. Ferguson, one question. What kind of
16 consulting business is Mr. Capps going to commence?

17 A Sales consulting.

18 Q For radio stations?

19 A Any kind of sales.

20 Q Have you discussed with him his consulting for
21 your radio station?

22 A No, I haven't.

23 Q Do you think it's a possibility?

24 A Well, I've got his training so I can probably
25 do it without him.

1 MR. FRIEDMAN: I have no further questions.

2 MR. ALPERT: No questions, Your Honor.

3 JUDGE LUTON: Thank you, Ms. Ferguson. You
4 may step down.

5 THE WITNESS: Thank you very much.

6 (Whereupon, the witness was excused.)

7 JUDGE LUTON: That completes the direct case?

8 MR. MONAHAN: Yes, Your Honor, that completes
9 Ferguson's direct case.

10 JUDGE LUTON: All right, that completes
11 everything. Schedule B is going to be produced. If
12 that indicates a need for further hearing I'm sure so
13 one or perhaps both the other parties will make a
14 motion. Does anybody have anything else? We've got the
15 matter of proposed findings. I realize that. All
16 right, let's go off the record for a moment.

17 (Whereupon, off the record at 3:22 for a brief
18 recess.)

19 JUDGE LUTON: The record is closed. Parties
20 have agreed to submit proposed findings by February 1,
21 1988 and reply proposed findings by February 22.
22 Thank you very much.

23 (Whereupon, the hearing was closed at 3:22
24 p.m. on December 7, 1987.)
25